COURT FEE 5 RS. भारत INDIA FIVE RUPEES CANCELLED

(3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 1084 OF 2004

Smt. Jyoti Sharma, : **PETITIONER**
Wife of Shri Kamlesh Sharma,
Aged about 33 years,
Sarpanch, Gram Panchayat, Bhadaha,
Tahsil Tilda, District Raipur (C.G.)

VERSUS

1) State of Chhattisgarh, : **RESPONDENTS**
Through the Secretary,
Panchayat & Gramin & Vikas,
Mantralaya, D.K.S. Bhawan,
Raipur (C.G.)

2) The Director (Panchayat),
State of Chhattisgarh,
Raipur (C.G.)

3) The Additional Collector,
Raipur, District Raipur (C.G.)

4) The Sub-Divisional Officer,
Raipur, District Raipur (C.G.)

5) The Up-Sarpanch,
Gram Panchayat, Bhadaha,
Tahsil Tilda, District Raipur (C.G.)

P.R. No. 1130/04
Presented by Shri Sushil Sahu
dated 15-11-04

उपयोग आयुक्त एस.के. अग्रवाल बिलासपुर (छ.ग.) 12/11/04

WRIT PETITION UNDER ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA

1) **PARTICULARS OF THE PETITIONER** : As stated above.

2) **PARTICULARS OF RESPONDENTS** : As stated above.

Received Copy Addl. To A.G. Sohgaura 15/11/2004

3) PARTICULARS OF THE ORDER AGAINST WHICH THE PETITION IS MADE:

This petition is against the order dated 28.01.2004 (Annexure P-5) passed by the Respondent No. 2, Director (Panchayat),

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(41)

आदेश पत्रक

मामला क्रमांक WP/10.1084/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

10.05.2004

Shri R.S. Jaiswal, counsel for the petitioner.

Shri Sanjay S. Agrawal, Panel Lawyer for respondents No.1 to 4.

Shri Prashant Mishra with Shri S.C. Verma, counsel for respondent No.5.

With consent heard finally.

2. This petition has been filed against order dated 28.01.2004 Annexure P-5 passed by respondent No.2/ Director.

3. Shri Jaiswal submits that the SDO had passed the order dated 09.01.2004 as per Annexure P-3 against the petitioner. Against that order, an appeal was preferred before the Collector. The Collector vide its order dated 24.01.2004 Annexure P-4, stayed the order dated 09.01.2004 passed by the SDO after hearing the petitioner as well as respondent No.5. Against the order dated 24.01.2004 passed by the Collector, the respondent No.5 preferred a revision before Director/respondent No.2, who passed the order dated 28.01.2004 Annexure P-5. This order Annexure P-5 was passed without issuing notice to the other side and without hearing him. The Director finally decided the matter setting aside the order dated 24.01.2004.

[पीछे देखिये

(42)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.No. 1084/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

4. Shri Jaiswal submits that the order dated 28.01.2004 has been passed against the principles of natural justice and contrary to Rule 5 of M.P./C.G. Panchayat (Appeal and Revision) Rules, 1995. Rule 5 of M.P./C.G. Panchayat (Appeal and Revision) Rules is relevant and quoted below:

> *"5. Revision – (1) (a) The State Government, the Commissioner, the Director of Panchayat, the Collector may on its/his own motion or on the application by any party, at any time for the purpose of satisfying itself/himself as to the legality or propriety of any order passed by or as to the regularity of the proceeding of, the authority subordinate to it/him call for and examine the record of any case pending before, or disposed of by, such authority and may pass such order in reference thereto as it/he may think fit:*
>
> *Provided that it/he shall not vary or reverse any order unless notice has been served on the parties interested and opportunity given to them for being heard:*
>
> *Provided further that no application for revision shall be entertained against an order appealable under the Act.*
>
> *(b) An application for revision by any party shall only be entertained if it is on the point of law and not on facts.*

[पीछे देखिये

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.MO. 1084/04 **सन्** 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

(2) Notwithstanding anything contained in sub-rule (1) –

(i) Where proceedings in respect of any case have been commenced by the State Government under sub-rule (1) no action shall be taken by other Officer mentioned in the said sub-rule in respect thereof, and

(ii) *Where proceedings in respect of any such case have been commenced by the Officer mentioned in sub-rule (1), the State Government may either refrain from taking any action under this rule in respect of such case until the final disposal of such proceeding by such officer or may withdraw such proceeding and pass such order as it may deem fit."*

5. A plain reading of Rule 5 shows that clause (1) (a) of this rule stipulates that the Revisional authority shall not vary or reverse any order unless notices have been served on the parties interested and opportunity given to them for being heard.

6. This Court in the case of Smt. Rani Bai vs State of Chhattisgarh and Others reported in 2002(2)C.G.L.J. 57 dealt with the similar matter and while setting aside the order passed by the Revisional Court, remanded the matter to the authority

[पीछे देखिये

(44)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.No. 1084/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

for hearing the parties. The present case is covered by the said decision.

7. In that view of the matter, in the opinion of this Court, the Director has passed the order in violation of the rules which could not have been done. The order dated 28.01.2004 has to be and is accordingly set aside.

8. The next question is whether the matter is to be remanded back to the Director/respondent No.2.

9. Learned counsel for the parties submitted that the said revision was preferred against the interim order and no useful purpose will be served if the matter is remanded back to the Director for issuing the notice and hearing the parties. They submits that the matter may be heard by the Collector / Additional Collector- the appellate authority.

10. Accordingly it is directed that the Collector / Additional Collector will hear and decide the matter as early as possible preferably within one month from the date of production of this order.

11. Counsel for the parties pray for a fixed date.

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(45)

आदेश पत्रक

W.P. No. 1084/04

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —5—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	12. In the circumstances, both the parties are directed to appear before Collector / Additional Collector on 07.06.2004, either in person or through their counsel, on which date the appellate authority– Collector / Additional Collector ~~will~~ MAY hear the matter. 13. With the aforesaid observations and directions, the petition is disposed of. Sd/- Fakhruddin Judge	